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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,028	02/17/2004	Paul E. Fumer	J-3705	9273
28165	7590	10/04/2006	EXAMINER	
S.C. JOHNSON & SON, INC. 1525 HOWE STREET RACINE, WI 53403-2236			COCKS, JOSIAH C	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/780,028

Applicant(s)

FURNER, PAUL E.

Examiner

Josiah Cocks

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE and amendment filed 7/11/2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 40-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 40-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/28/06.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination ("RCE") under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's RCE submission and accompanying amendment filed on 7/11/2006 have been entered.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 8/28/2006 has been considered by the examiner.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-8 and 52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the capillary pedestal" in line 9. There is insufficient antecedent basis for this limitation in the claim. A "capillary pedestal" has not previously been introduced. Does the term pedestal refer to a new structural element of the capillary lobe or is applicant intending to refer to the capillary lobe itself? As best can be determined, and for the purpose of an examination on the merits, it appears applicant intended to recite "the capillary lobe".

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 9 and 40-49 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0166863 to Wright et al. ("Wright").

Wright discloses in the specification and Figures 1-8 an invention in the same field of endeavor as applicant's invention and as described in applicant's claims 9 and 40-49. In particular, Wright shows a candle comprising a meltable solid fuel element (28), a melting plate/support plate (32) upon which the fuel element rests, and a raised lobe (e.g. 50 or 50c) that is considered to be a capillary lobe that rests on the melting plate (see at least Fig. 4). The lobe/dome (50c) cooperatively engages a recessed base portion of a wick holder (25, see recessed central portion of wick holder). Though it is not entirely clear from the figures if there

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is a gap between the lobe and the base portion, Wright recites the following in the beginning of paragraph [0057]:

“When the candle is burned, the wax moves up the wick by capillary action to fuel the flames as is conventional....At some point, before the pool is depleted, the pool will fall below the upper edge of the lip surrounding the dish shaped depression, and no further wax will be fed to the wick...” (see Wright, paragraph [0057]).

The stated depression is portion (27, e.g. Figs. 1-4) and the lip is the surrounding sidewall (41) (see page 5, paragraph [0045]). Accordingly, as the wick will continue to burn when the level of the fuel is below the top of wick holder (25) but above the sidewall (41), then this wick must necessarily receive wax from a gap between the base of the wick holder (25) and the top surface (40) of the lobe (e.g. at least 50 or 50c).

In regard to at least claim 9, the wick holder (25) is clearly shown on a top portion of the lobe (50 or 50c) and is considered to cover the wick holder.

In regard to at least claim 41, see at least line 7 of the Abstract describing a distance from the bottom support plate as .025 inches.

In regard to at least claims 42 and 45, the term “skirt” is not considered to structurally define over the base portion of wick holder (25). Further, the gap that is considered to be formed (see above) between the wick holder and the lobe/dome (50) is considered to be “around” the lobe and “fit closely” over the lobe as recited.

In regard to at least claim 43, the support plate and lobe are metal (see at least p. 4, paragraph [0040]).

In regard to at least claim 46, note Figs. 2 and 4 and recesses (either 53, or the recess formed by sidewalls 41).

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In regard to at least claim 47, the fuel is a burnable wax, which is a fuel element of volatile active material.

In regard to at least claim 48, the gap of Wright is considered disposed as recited.

In regard to at least claim 49, the support plate of Wright is shaped as recited.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 10-12, 14-16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright as applied to the claims 9 and 14 above in view of U.S. Patent No. 3,910,753 to Lee ("Lee") (cited by applicant).

Wright teaches all the limitations of claims 10-12, 14-16, and 18 (note discussion of the teachings of Wright above) with the possible exception of a heat conductive fin on the wick holder and that the fuel element is replaceable.

Lee teaches a candle in the same field of endeavor as applicant's invention and Wright. In particular, Lee shows a candle having a support base (11) and a wick holder (H, with body 17). The wick holder supports the wick (W) and includes flow channels (20) that allows for wax melted by the holder (body 17, including lower flange 19) to pass through the channels by capillary action to reach the wick (see col. 3, line 56 through col. 4, line 2). The wick holder

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(17) further includes an upper flange portion (18) that, along with lower flange (19) form heat conductive fins and raised heat conductive portions (see col. 3, lines 44-55).

In regard to the recitation in the claims of a replaceable fuel element, Lee makes clear that it is understood in the art additional wax may be supplied to candle assemblies (i.e. that of both Lee and Wright) in order to replenish consumed wax (see col. 5, lines 1-6). A person of ordinary skill in the would therefore consider the wax added in Wright to also be capable of being replenished and is therefore properly considered replaceable in order to desirably replenish/replace wax consumed by the flame produced by the wick.

Therefore, in regard to claims 10-12, 14-16, and 18, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the candle of Wright to incorporate the wick holder structure of Lee to desirably form a wick holder that operates in conjunction with a lower support plate to desirably cause the wick holder to melt the surrounding wax in order to render it fluid so that it may be conducted to the wick to support a flame (see Lee, col. 2, lines 3-16).

9. Claims 13, 50, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0166863 to Wright et al. ("Wright") in view of U.S. Patent No. 3,689,616 to Kelley ("Kelley").

Wright discloses substantially all the limitations of claims 13, 50, and 51 (note the discussion of the teachings of Wright above) with the possible exception that the melting plate is treated to be self-cleaning or that a coating of a layer polytetrafluoroethylene is applied.

Kelley teaches a process of forming candles and describes that ,for the purpose of preventing wax from adhering to a portions of a candle mold, a layer or coating of teflon may be applied to components of the mold (see col. 3, lines 29-37). The term “teflon” is understood to be a trade name for polytetrafluoroethylene (see MPEP Appendix I). This layer functions to make the wax non adhere to coated component and is therefore considered to be “self-cleaning” as recited. A person of ordinary skill in the art would consider the problem of preventing wax adherence to a candle mold to be analogous to the problem of preventing wax adherence to structures in a candle container.

Therefore, in regard to claims 13, 50, and 51, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the melting plate of Wright to include a coating as recited in Kelley for the desirable purpose of preventing wax adherence to portions of a candle apparatus (see Kelley, col. 3, lines 29-37).

10. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wright and Lee as applied to claim 14 above and further in view of U.S. Patent No. 3,730,674 to Gross (“Gross”).

Wright and Lee teach all the limitations of claims 17 (note discussion of the teachings of these references above) except for a starter bump on the top surface.

Gross teaches a candle in the same field of endeavor as applicant’s invention and Wright. In Gross, a wick (14) lies within a well (18). Gross also identifies that the surface through which the wick extends may be varied as desired (see col. 3, lines 41-45). The sides of this well function to form raised portions that are considered to constitute the starter bump as claimed.

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The raised side wells of this well provide for quick pooling of wax around the wick that aids in combustion (see col. 3, lines 24-45).

Therefore, in regard to claim 17 it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the candle of Wright to incorporate the well side wall/bump portions of Gross to desirably promote wax pooling around the wick end during burning of the wick (see Gross, col. 3, lines 24-45).

11. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wright as applied to claim 14 above in view of U.S. Patent No. 3,689,616 to Kelley ("Kelley").

Wright discloses all the limitations of claim 19 (note discussion of the teachings of Wright above) except possibly that the melting plate is treated to be self-cleaning.

Kelley teaches a process of forming candles and describes that ,for the purpose of preventing wax from adhering to a portion of a candle mold, a layer or coating of teflon may be applied to components of the mold (see col. 3, lines 29-37). This layer functions to make the wax non adhere to coated component and is therefore considered to be "self-cleaning" as recited. A person of ordinary skill in the art would consider the problem of preventing wax adherence to a candle mold to be analogous to the problem of preventing wax adherence to structures in a candle container.

Therefore, in regard to claim 19, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the melting plate of Wright to include a "self-cleaning" coating as recited in Kelley for the desirable purpose of preventing wax adherence to portions of a candle apparatus (see Kelley, col. 3, lines 29-37).

Allowable Subject Matter

12. Claims 1-8 and 52 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: In regard to claim 1, in light of the record taken as a whole, including applicant's arguments presented 7/11/2006, the prior art is not considered to disclose, teach or suggest the candle with meltable solid fuel element including the structure and operational relationship of the melting plate having a capillary lobe with upwardly extending wall and the wick holder carrying a wick over the capillary lobe that receives melted fuel rising upwardly along a gap formed by wall of the capillary lobe and a down-turned skirt portion of the wick holder as recited.

In regard to claims 2-8 and 52, these claims are allowable (after correction of the 112, 2nd paragraph rejection) as being dependent upon allowable claim 1.

Response to Arguments

13. Applicant's arguments filed 7/11/2006 with regard to claims 9-19 and 40-51 have been fully considered but they are not persuasive. As noted above, all of the elements as now recited in each of these claims have been identified in the prior art.

Accordingly, applicant's claims 9-19 and 40-51 are not considered to patentably distinguish over the prior art of record.

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Conclusion

14. This action is made non-final. A THREE (3) MONTH shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR


1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on M-F 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jcc
September 25, 2006


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749